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Counsel for Plaintiffs

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
OAKLAND DIVISION

PINEROS Y CAMPESINOS UNIDOS DEL)
NOROESTE, UNITED FARM WORKERS,)
FARMWORKER ASSOCIATION OF FLORIDA,)
CALIFORNIA RURAL LEGAL ASSISTANCE)
FOUNDATION, and PESTICIDE ACTION)
NETWORK NORTH AMERICA,)

Plaintiffs,)

v.)

E. SCOTT PRUITT, in his official capacity as)
Administrator of the U.S. Environmental Protection)
Agency; and U.S. ENVIRONMENTAL)
PROTECTION AGENCY,)

Defendants.)

Case No: 4:17-cv-03434 JSW

**DECLARATION OF RICHARD DRURY IN
SUPPORT OF PLAINTIFFS' MOTION
FOR ATTORNEY FEES**

1 I, Richard T. Drury, declare as follows:

2 1. I submit this declaration in support of petitioners' application for an award of attorney
3 fees under the Equal Access to Justice Act ("EAJA"). I have personal knowledge of the matters
4 stated herein and, if called as a witness, could and would competently testify thereto.
5

6 2. I am licensed to practice law in the State of California and am a partner with Lozeau
7 Drury in Alameda, California. I graduated from the Yale Law School in 1990, where I received the
8 Raphael Lemkin Prize for outstanding work in international human rights for a book on international
9 human rights law which was later published as *Plowshares and Swords* (Beacon Press, 1992). After
10 graduating from law school, I served as a judicial law clerk to Chief Judge Thelton E. Henderson of
11 the United States District Court for the Northern District of California from 1990 to 1992. Following
12 my clerkship, I worked as a law fellow at Shute, Mihaly & Weinberger LLP from 1992 to 1993,
13 where I represented public agencies and citizen groups in environmental litigation.
14

15 3. For a decade (1993-2003) I worked as staff attorney and Legal Director for
16 Communities for a Better Environment ("CBE"). While at CBE, I specialized in public interest
17 litigation related to land use law, water and air quality, and public health, and successfully
18 prosecuted over 50 environmental lawsuits in both state and federal court, including trials, summary
19 judgments and settlements. In 2003, I moved from CBE to Adams, Broadwell, Joseph & Cardozo,
20 where I represented community groups, public interest organizations, and workers in cases related to
21 land use, public health and the environment. Since 2008 I have practiced law with Lozeau Drury
22 LLP, where I continue to represent community groups, public interest organizations, and workers in
23 cases related to land use, public health and the environment.
24
25

26 4. I have been an Adjunct Professor of environmental law at the University of California
27 Berkeley Boalt Hall School of Law, Golden Gate University School of Law, and the New College
28 School of Law. I have lectured extensively on various topics in land use and environmental law, at

1 several California State Bar mandatory continuing legal education (MCLE) classes on environmental
2 law, at State Bar Environment Section annual conferences, and at several law schools, including
3 Harvard, Yale, Stanford, and Boalt. I was one of ten young lawyers featured for outstanding work in
4 the field of environmental law by the California Lawyer magazine (November 1997), and I was
5 recipient of the 2011, 2009 and 2002 *California Lawyer Magazine* Attorney of the Year ("CLAY")
6 award in the field of environmental law. In 2003, I received the Ecology Law Quarterly
7 Environmental Leadership Award. In 2004, I delivered a keynote speech at the Public Interest
8 Environmental Law Conference at the University of Oregon in Eugene.

10 5. In representing public interest groups, I have become familiar with the law governing
11 the award of attorneys' fees pursuant to EAJA and other fee shifting statutes. Many of the cases I
12 handle have involved claims for an award of attorneys' fees. For example, I was awarded attorneys'
13 fees in: *Save Strawberry Canyon v. Dep't of Energy*, 613 F. Supp. 2d 1177 (N.D. Cal. 2009) (EAJA
14 case); *Avila Alliance v. Unocal Corp.*, Case No. CV 079727 (San Luis Obispo County Superior
15 Court) (\$1.5 million in fees and costs). I have also received attorneys' fees in a number cases
16 brought under the federal Clean Water Act and Clean Air Act. *See, e.g., Communities for a Better*
17 *Environment v. Chevron Corp.*, Civil No. 98 5173 (DT) (BQRx) (C.D. Cal.) (\$485,000 in attorneys'
18 fees and costs); *Citizens for a Better Environment v. Union Oil Co.*, 83 F.3d 1111 (9th Cir. 1996)
19 (\$2.7 million in attorneys' fees and costs).

22 6. I currently have clients who pay me at a rates of \$700-850 per hour and who pay
23 associates at my firm rates ranging from \$375 to \$550 per hour.

25 7. Our firm regularly files petitions for attorney fees under various environmental
26 statutes. For example, in the case of *Env't'l Research Center v. Rain Int'l*, No. RG16817466, brought
27 under the California Safe Drinking Water and Toxic Enforcement Act (Proposition 65), California
28 Health & Safety Code § 25249.5, the Alameda Superior Court made an express finding that partner

1 rates of \$700 per hour; associate rates ranging from \$350 per hour (first year associate) to \$420 per
 2 hour (fourth year associate); and paralegal rates of \$175 per hour were reasonable. (Order of Judge
 3 Scott Patton (Aug. 8, 2016) (“The award of attorney’s fees is reasonable under California law.”)).

4
 5 8. In 2009 I was awarded a rate of \$650 per hour by Judge Carl J. West of the Los
 6 Angeles Superior Court in the case of *Environmental Law Foundation v. Atlantic Express of LA, et*
 7 *al.* (Los Angeles Superior Case No. CGC-06-451832). Judge West made an express finding that the
 8 rate of \$650 per hour was reasonable. Partner rates in that case ranged from \$600 to \$700 per hour.
 9 Associate rates ranged from \$395 to \$575 per hour.

10
 11 9. I was also awarded a rate of \$650 per hour in 2008 by San Francisco Superior Court
 12 Judge Ernest Goldsmith in the case of *Environmental Law Foundation et al. v. Laidlaw Transit Inc.*
 13 *et al.*, (San Francisco Superior Court No. CGC-06-451832). Judge Goldsmith made an express
 14 finding that the rate of \$650 per hour was reasonable. Partner rates in that case ranged from \$550 to
 15 \$700 per hour. Associate rates ranged from \$375 to \$575 per hour. The San Francisco Superior
 16 Court found the following hourly rates reasonable in that action, plus a
 17 1.25 multiplier:

18
 19 **Years of Experience Rate**

20	29	\$750
21	26	\$700
22	24	\$700
23	23	\$650
24	18	\$650
25	16	\$625
26	14	\$600
27	10	\$560
28	9	\$495-575
	8	\$475
	7	\$450
	6	\$395
	4	\$325
	2	\$300
	1	\$250
	Paralegals	\$145-175

Interns	\$125
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10. In preparing this declaration, I have reviewed petitioners' successful motion for summary judgment and reply brief as well as the opposition brief, complaint and order of the Court granting summary judgment. I can attest that the legal work done in this case was of the highest quality.

11. For decades, I have been familiar with Earthjustice, one of the firms representing plaintiffs in this case. Its reputation as one of the leading environmental law firms in nation is well-founded and due to the high caliber, skill and commitment of its attorneys. In general, I have found Earthjustice attorneys' legal counsel, analysis, and judgment to be of excellent quality. I am personally familiar with two of the attorneys in this case, Stacy Geis and Yana Garcia and know them to be among the finest environmental lawyers in the State.

12. According to a recent annual survey conducted by the *National Law Journal* of law firm billing rates in the 2016 calendar year, the average billing rate for partners at law firms with major offices in the San Francisco Bay Area that have significant environmental law practices ranged from approximately \$1240 to \$660 per hour, with an average rate of approximately \$850 per hour. For example, partners at Paul Weiss billed at an average rate of \$1240 per hour. Partners at Cooley billed at an average rate of \$995 per hour. Partners at Reed Smith billed at an average rate of \$800 per hour. Partners at Farella Braun and Martel billed at an average rate of \$661 per hour. Partners at Greenberg Traurig billed at an average rate of \$950 per hour. Partners at Irell and Manella bill at an average rate of \$1135 per hour. Partners at Sheppard Mullin bill at an average rate of \$760 per hour. Lawyers (partners and associates) at Gibson Dunn & Crutcher billed at an average rate of \$855 per hour. Lawyers (partners and associates) at Morgan Lewis & Brokious billed at an average rate of \$700 per hour.

1 13. The same 2016 *National Law Journal* survey found average associate rates in firms
 2 with major offices in San Francisco to range from approximately \$800 to \$360 per hour, with an
 3 average of approximately, \$550. For example, associates at Irell and Manella billed at an average
 4 rate of \$870 per hour. Associates at Paul Weiss billed at an average rate of \$713 per hour.
 5 Associates at Cooley billed at rates ranging from \$800 to \$425 with an average associate rate of
 6 \$563 per hour. Associates at Reed Smith billed at an average rate of \$575 per hour. Associates at
 7 Greenberg Traurig billed at an average rate of \$563 per hour. Associates at Sheppard Mullin billed
 8 at an average rate of \$488 per hour.

10 14. Courts have often relied upon the National Law Journal billing rate survey as
 11 instructive in determining appropriate hourly rates. *See, e.g., Schwarz v. Secretary of Health &*
 12 *Human Serv.*, 73 F.3d 895, 908 (9th Cir. 1995).

14 15. Another useful benchmark in determining reasonable market rates is the adjusted
 15 Laffey Matrix, named after, *Laffey v. Northwest Airlines, Inc.*, 572 F.Supp. 354, 371 (D.D.C. 1983).
 16 Courts have relied on the updated Laffey Matrix, *Smith v. District of Columbia*, 466 F. Supp. 2d 151,
 17 156 (D.D.C. 2006), including federal courts in the Northern District of California. *Kempf v. Barrett*
 18 *Bus. Servs.*, No. C-06-3161 SC, 2007 U.S. Dist. LEXIS 89447, 2007 WL 4167016 (N.D. Cal. Nov.
 19 20, 2007), *aff'd*, 336 Fed.Appx. 658, 2009 WL 1975439 (finding attorneys' requested fees
 20 reasonable when compared to rates in the Updated Laffey Matrix). While reliance on the Laffey
 21 Matrix (adjusted for local rates) is not mandatory, the courts have held that it is a useful indicator of
 22 billing rates in conjunction with attorney declarations and other information. *Syers Properties III,*
 23 *Inc. v. Rankin*, 226 Cal. App. 4th 691, 702 (2014). The Laffey Matrix is available on-line at:
 24 <http://www.laffeymatrix.com/see.html>. According to the most recent Laffey Matrix, current market
 25 rates are: paralegals - \$196; 1-3 year lawyers - \$359; 4-7 year lawyers - \$440; 8-10 year lawyers -
 26 \$636; 11-19 year lawyers - \$717; 20+ year lawyers - \$864. <http://www.laffeymatrix.com/see.html>.

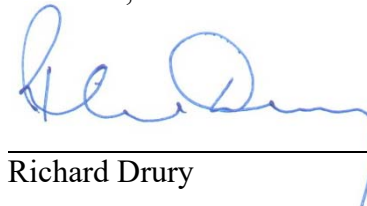
1 16. Based on my experience in public interest litigation, it is my opinion that the hourly
2 rates requested by petitioners' are well within the range of prevailing market rates for attorneys with
3 comparable expertise and skill in the San Francisco Bay Area. In my opinion:

- 4 a. Eve Gartner: the rate of \$750 per hour requested for Eve Gartner, a 1988 graduate of
5 Columbia University Law School, is well below the Bay Area market rate of
6 approximately \$864 per hour.
- 7 b. Stacey Geis: the rate of \$650 per hour requested for Stacey Geis, a 1994 graduate of
8 the University of Virginia law school, is well below the Bay Area market rate of
9 approximately \$864 per hour.
- 10 c. Virginia Ruiz: the rate of \$650 per hour requested for Virginia Ruiz, a 1997 graduate
11 of Stanford Law School, is well below the Bay Area market rate of approximately
12 \$864 per hour.
- 13 d. Yana Garcia: the rate of \$400 per hour requested for Yana Garcia, a 2011 graduate of
14 Northeastern University Law School, is well below the Bay Area market rate of
15 approximately \$636 per hour.
- 16 e. Alexis Andiman: the rate of \$350 per hour requested for Alexis Andiman, a 2013
17 graduate of Lewis and Clark Law School, is well below the Bay Area market rate of
18 approximately \$440 per hour.
- 19 f. Marie Logan: the rate of \$197 per hour requested for Marie Logan, a 2015 graduate
20 of University of Pennsylvania Law School, is well below the Bay Area market rate of
21 approximately \$359 per hour.
- 22 g. Law Clerks: the rate of \$189 per hour requested for law clerks is below the Bay Area
23 market rate of approximately \$196 per hour.
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1 14. In my opinion, petitioners would not have been able to retain qualified counsel for a
2 case of this nature at the EAJA statutory cap of \$125 per hour, even when adjusted for inflation.

3 I declare under penalty of perjury that the foregoing is true and correct to the best of my
4 knowledge and belief.
5

6 Executed on this 15th day of May, 2018, at Oakland, California.

7 
8
9 _____
Richard Drury